

WASHINGTON STATE GAMBLING COMMISSION

MINUTES SPECIAL COMMISSION HEARING QUINULT TRIBAL-STATE CLASS III GAMING COMPACT SATURDAY, JUNE 1, 1996

Chairman Tull called the meeting to order at 10:15 a.m. at the Shilo Inn at Ocean Shores, Washington.

MEMBERS PRESENT: **ROBERT M. TULL, Chairman; EDWARD HEAVEY; CURTIS LUDWIG; and LIZ McLAUGHLIN; and Ex Officio Members SENATOR MARGARITA PRENTICE and REPRESENTATIVE RUTH FISHER.**

OTHERS PRESENT: **FRANK MILLER, Director;
BEN BISHOP, Deputy Director;
CARRIE TELLEFSON, Special Assistant, Public Affairs;
JONATHAN McCOY, Assistant Attorney General;
and SUSAN GREEN, Executive Assistant.**

Chairman Tull said Commissioner Ludwig will be arriving soon. He said the initial purpose of this meeting is to conduct a public hearing to solicit views about the proposed Class III gaming compact with the Quinault Indian Nation. First, there will be a brief overview by Director Miller, followed by comments from Pearl Capoeman-Baller, Tribal Chair of the Quinault Indian Nation, and a presentation by Ray Lorton, a representative of the Quinault Indian Nation. Subsequent to Mr. Lorton's presentation, there will be public testimony. There is an extensive sign-up list for testimony. The Commission will try to hear everybody that wishes to testify, including those not on the sign-up list.

Chairman Tull pointed out that members of the Commission have had copies of the proposed compact for quite some time, the compact has been reviewed to some extent by a joint committee of the Legislature, and the Commission has been supplied with correspondence regarding this matter that has been collected over the last several months. He said that the Commission is also anxious to hear the live testimony at today's meeting.

PRESENTATION BY FRANK MILLER, DIRECTOR, WASHINGTON STATE GAMBLING COMMISSION

Director Miller said this compact is the 19th compact in the state of Washington and it mirrors other compacts in many ways. With regard to the scope of the gaming, this compact allows the Quinault Indian Nation to have one facility on Indian lands. The facility will start with 30 tables with one table for charities and local communities. Upon implementation of Phase II, the facility will have 50 tables with two tables for charities and local communities. A station or a table is one game, i.e., a blackjack game, a craps table, a roulette table, etc. The casino cannot offer slot machines or unauthorized gambling devices.

Under Phase I, the facility is allowed 30 tables with one table for charities, 112 hours per week not to exceed 20 hours per day, and wager limits of \$250. After six months, Commission staff does a comprehensive review of the operation. If the review finds that the terms of the compact have been complied with and the Tribe has developed a strong tribal gaming regulatory presence, then the tribe is allowed to proceed Phase II. Under Phase II, the facility is allowed 50 tables with two tables for local charities, 140 hours per week, not to exceed 20 hours per day, and wager limits of \$500.

Mr. Miller said the Tribe has agreed to make a two percent contribution of net win to local governments to help mitigate any impacts that may arise from this operation. The jurisdiction and regulation in this casino is a joint program. It is a partnership between the state of Washington and the Quinault Indian Nation. The Quinaults will be the primary regulator on a day-to-day basis; however, all employees of the gaming operation will be required to be certified by the Washington State Gambling Commission. The state also has concurrent authority with the Tribe to co-regulate. The Tribe will reimburse the state for its costs. From this perspective, this compact mirrors other compacts in the state. There are currently ten casinos in Western Washington under similar agreements.

Negotiations have been approximately eight to nine months. Commission staff have had an excellent relationship with the Tribe in reaching this agreement. There were two public meetings in this local area that were very well attended. Commission staff received a lot of input from citizens and the local business community and government officials. There was a legislative hearing last week of an eight member joint committee and by a six to two vote, that committee adopted a resolution asking that the Commission not approve this compact.

Mr. Miller said the issue to be determined by the Commission is the nature of the land in question. The Indian Gaming Regulatory Act (IGRA), which is what gives the state the opportunity to negotiate with the tribes and requires the tribes to negotiate with the state in order to conduct Class III gaming, states that tribes can conduct gaming on Indian lands only. For purpose of the Federal law, Indian lands, in 1988, were defined as all lands within the reservation boundary and any lands that are held in trust outside the reservation boundary, in which a tribe exercises governmental power. Commission staff has done extensive research on this parcel of land and it appears to be trust land and has been trust land for approximately 100 years. There is a letter from the Bureau of Indian Affairs outlining the history of this parcel. In the early 1900s, the parcel was mistakenly taken off the trust rolls. In 1916, the mistake was corrected and the parcel was put back on the trust rolls. The parcel has been held in trust for individual members of the Quinault Indian Nation and their heirs. The Federal law makes no distinction between held in trust for a tribe or individual members for purposes of IGRA at this point in time. The real issue is exercise of governmental power. Commission staff searched for any bits of evidence that would establish a relationship between government and the land or the people on the land. Staff found numerous pieces of evidence that staff believes support governmental power over the land.

First, the Quinault Indian Nation's constitution, which was adopted and approved in 1975, states the following: "Notwithstanding the issuance of any patent, the jurisdiction and governmental power of the Quinault Indian Nation shall extend to (sub C) all lands or waters held by the United States in trust or reserved by the Quinault Indian Nation for the use and benefit of any member of the Quinault Tribe when such lands are not within the boundaries of an established Indian reservation." He said that expression showed the intent by the Tribe to have governmental power over this parcel. The land is not presently inhabited by the Tribe, but there is a lease between the owners of the land and the flea market, which addresses concurrent jurisdiction of local government and the Tribe and states, "No illegal drugs of any kind will be sold, used or grown on the premises of the flea market. This rule will be strictly enforced and if this rule is broken, occupants will be contacted by the Quinault tribal authorities as well as county drug enforcement." The county has criminal authority because of the 280 status of the property.

Mr. Miller said that paragraph C of the lease regarding eviction states that if the written eviction notice isn't taken seriously, Quinault tribal authorities will become involved in eviction proceedings. He said this shows a recognition by the current owners, Quinault tribal members, that tribal law is applicable is a dispute and is another piece of evidence that supports the argument that Quinault governmental power has been exercised over this property. Two affidavits by Quinault tribal police also support this argument. The Chief of Police states that twice a day, five days a week, he has gone through or at least driven by this property and has

looked for signs of illegal or unusual activity, which is another expression by tribal government that they have exercised governmental power over the property. Another Quinault member who has been with the Police for approximately 14 years also, by declaration, indicated the same presence. There has been a sign posted on the property.

Mr. Miller said the WSGC staff is aware of nothing in the federal law that requires exclusive jurisdiction by a tribe. It is clear in the case that the Tribe has exercised jurisdiction, it just states they must have governmental power over the property. There is no doubt that they have power over their own people on the power, and they have recognized in their ordinance that the Tribe cannot have power over non-Indians on that property due to legal issues in this area. All this evidence of the exercise of governmental power warranted negotiating on this parcel for use by Indian gaming. There are also other reasons the WSGC staff found it to be important to negotiate on this parcel.

Mr. Miller said the compact authorizes one facility on Indian lands, and the language used includes that, if the land is deemed Indian land, the site must be within close proximity to the Tribe, and the land in question is within 15 miles. The Tribe's law enforcement capabilities are within 15 miles of the site. The site is also more accessible from the public health and safety standpoint than it would be on the reservation and is also more accessible to local law enforcement. The site has been held in trust since prior to 1988. The Governor would have to approve any newly-acquired land and the Commission has not agreed to negotiate or even discuss newly-acquired land with any tribe at this point. The Quinault land has been held in trust for more than 100 years. The compact also states that the Secretary of the Interior determines the site to be Indian land as pursuant to IGRA by approval and publication of this compact. These five points are in the compact. Not only does the Commission have to make the determination as to whether this is Indian land, but so do the Governor and the Secretary of the Interior.

Mr. Miller said there was a case that came out in April involving a tribe trying to gain jurisdiction over a parcel of land in another state and the Secretary of the Interior determine the land to not be Indian land for the purposes of IGRA. Final approval by the Secretary of the Interior determines the status of this Indian land as well. If the decision by the Secretary were to be that this is not Indian land, then the Quinault Nation would have to locate its casino on reservation land as authorized in the compact. He said this issue has been controversial and the commissioners have to consider what precedent this might set. When Director Miller gave testimony about this compact before the joint legislative committees, he shared the story about the Colville Tribe, where they had a compact that was not signed by the Governor due to location of the casino and the Tribe would not re-negotiate. The Colville Tribe now operates slot machines with no state involvement.

Mr. Miller said the Upper Skagit Tribe's facility is on a separate parcel from its reservation that is also reservation land, the status of which was granted some years ago. The facility is eight to ten miles from the reservation. The WSGC staff has done extensive research and could find no other major pieces of trust land in any type of populated area that could be used for a casino. The Kalispel Tribe has trust land it acquired in Airway Heights in Spokane in 1993. The Tribe has informally contacted the WSGC but was told to contact the Governors Office if it wanted to discuss that issue. The Yakama Nation has land along the Columbia River but has agreed, through its compact, to one casino on the reservation. The Spokane Tribe has trust land North of Spokane but there are no negotiations for that and they have been operating without a compact. The Colville Tribe has trust land in Manson. The staff is not aware of any other viable trust land. Every other compact requires limits to one casino on the reservation and the state is not required to reopen negotiations for additional or different locations.

PRESENTATION BY

THE QUINULT INDIAN NATION

Pearl Capoeman-Baller, Tribal Chair, thanked the Gambling Commission for coming out to the beach area to listen to comments of the Tribe and the public. She said that the Quinault Nation has negotiated in good faith and has met with the public, the community members, with Grays Harbor County people, and various organizations. She said Director Miller and the staff have been very open and have worked together well. The concerns have been heard at meetings, but also the support of businesses and residents for this casino and the compact. She said the site at Ocean Shores is a good site because it is Indian lands as defined under IGRA, and the site selection benefits the neighboring communities as well as the Tribe. The location for the casino is within the Tribes ancestral territory and within its modern community of interest. The Quinault Constitution was adopted in 1975 and a long time before anyone was thinking about locations for casinos, the Constitution provided that the Nation's jurisdiction and power extends to all lands within the reservations and all lands held in trust for the Nation or tribal members, whether within or without the reservation. The Sampson Johns Allotment extends to the ocean and is also within their usual and accustomed hunting and fishing areas. The Nation's extensive jurisdiction was recognized by the federal courts and U.S. v. Washington. She said that during the course of the compact negotiations, they additionally demonstrated numerous civil and criminal jurisdiction over the Sampson Johns Allotment and over the allottees. Today, the Commission will hear from staff and council members who were part of the negotiations process; however, she will not be available for the remainder of the hearing because she has a plane to catch at SeaTac Airport. She said she felt it was important to appear before the Gambling Commission to encourage them to support this compact. She thanked the residents, various business and the City and County for working well with the Quinault Nation and said this site will benefit everyone. The cooperation has shown that everyone can work together. She said Ray Lorton would be available to answer any questions.

Chairman Tull thanked Chair Capoeman-Baller for taking the time to be here and address the Commission.

(Commissioner Ludwig arrived at this time)

Ray Lorton, Quinault Nation Council member and chair of the business development committee, said he appreciates the opportunity to appear before the Gambling Commission and he acknowledged the staff as professional, cooperative and open minded about this issue. He said the two staffs worked together well and could not have accomplished completing the compact without working so well together. He said as Director Miller pointed out, this compact is essentially identical to every other compact with the state, and the only difference, which has become the focus, is clarity on Indian lands, since this land is some distance from the reservation. While this is not an issue of state law or jurisdiction, the Tribe has in good faith demonstrated a clear record that the Sampson Johns Allotment meets statutory requirements. He said they've also agreed to a set of criteria that provides conditions including not only the Commission's approval, but also that of the Secretary of the Interior. In addition to their legal right to locate their casino on the Sampson Johns Allotment, the site makes good practical sense in terms of law enforcement issues, better highway access that is safer than driving to the reservation, and better coordination with local law enforcement and emergency services. He said public safety was discussed at great lengths and is very important to the Tribe and to everyone involved. From an economic point of view, the location has a built-in tourism market that the reservation does not have, which is good for both the Tribe and the entire community.

Mr. Lorton said there has been some concern expressed that the compact will trigger some unique precedent and that off-reservation casinos will sprout up all over Washington state. The Tribe believes this will not happen because any new acquisition of lands off-reservation requires local consultation and approval of the Governor. In addition, all but three Washington state tribes have compacts that limit each tribe to one already-defined, existing casino site. This is important

to take into account when looking at the Quinault compact. There are also a few situations nationally where the legal and functional connection with the off-reservation sites in other states. The Tribe's research indicates that, in almost two decades of modern Indian gaming, off-reservation sites are fairly infrequent, and there are only eight casinos on off-reservation sites in five states, Kansas, Minnesota, Oregon, Wisconsin, and South Dakota, plus Oklahoma, which technically does not have many existing reservations.

Mr. Lorton said the Tribe's negotiations have been going on with the state for eight months, and throughout that time the Tribe has involved the local communities. They have had various public hearings and meetings with the Grays Harbor communities, which have been attended by Mr. Lorton, tribal leaders and staff people. There have been good working relationships developed with local governments where it had been stagnant in the past. The Nation has pledged one-fifth of the development funds with the County, the Port of Grays Harbor, Ocean Shores and Westport to establish a much-needed car ferry between Ocean Shores and Westport. Additionally, the Tribe is interested in developing the Ocean Shores Marina. They have worked with the County and Ocean Shores on the issues of law enforcement, emergency services and other casino-related matters. He said the Tribe knows the community has suffered severe economic strain from the decline in traditional resources of timber and fish. The casino will boost the developing tourist industry.

Mr. Lorton said the Commission also needs to understand the most important reason the Tribe needs this compact and casino, which is for funding tribal programs. There are many programs that do not have the revenues available to adequately support the needs of the tribal members. The tribal unemployment rate averages 35 percent, but if seasonal unemployment is taken into account the figure is more like 50 percent. When looking at the Tribe's needs and the IGRA, the purpose of IGRA is to allow tribes to stimulate their economies. He said this compact is a win-win for the Tribe and local communities. He urged the Commission to approve the compact, which has been worked on diligently by the negotiators. He said the Tribe and the state have been patient and considerate throughout the process in working out differences.

Chairman Tull said that Commissioner Heavey suggested that some of the issues be explained prior to public comment so that everyone will be informed on the question how the Commission should decide, in its function, whether or not the site is Indian land in accordance with IGRA for Class III gaming. The attorneys present could probably spend hours or longer looking at these issues. He asked Jon McCoy to succinctly explain in summary form what the Commission should focus on in its review of compacts, documents and testimony before going forward. He said it isn't certain that this will be resolved today.

Jon McCoy, Assistant Attorney General, said that, as it has been pointed out, the definition of Indian lands is what controls whether gaming may be conducted on a particular site. Lands located off-reservation have the additional requirement that the Tribe seeking to site a casino on that land exercise governmental power over that parcel. There is very little case law that deals with the question of what does exercising governmental power mean. One of those cases is called the Cheyenne River Sioux v. Oklahoma Tribe in South Dakota. That court laid out criteria for governmental power including whether the area is developed; whether tribal members reside on the property, which has been a question used when determining taxation in other cases; whether any governmental services are provided and by whom, such as law enforcement; and who exercises governmental authority in those areas. He said it is appropriate for the Gambling Commission to consider these criteria when deciding what standards it will use for this and future compacts.

Chairman Tull said standards set by the Commission apply only to the Commission's determinations and have no effect on the Governor's determination criteria or that of the Secretary of the Interior. **Commissioner Heavey** said he knows Mr. McCoy was trying to encapsulate, but he indicated this is a simple issue in terms of facts. He asked if there are other

issues in terms of legal issues that are outside of or in addition to the facts; **Mr. McCoy** said there are some issues that apply, but there are not a lot of cases that deal with tribal jurisdiction or tribal exercises of authority off the reservation. Almost all of the cases deal with those issues regard reservation land, or trust and fee land within the reservation. Washington is a Public Law 280 state. Public Law 280 was passed by Congress passed in 1953 and gave Washington state the authority to exercise its state law within Indian lands within the state border. Washington assumed that jurisdiction in 1957 with some clarifications in an enactment in 1963. With regard to trust land off the reservation, Washington assumed full criminal and civil jurisdiction. This means all state laws of general applicability would apply on the Sampson Johns Allotment, which means the primary law enforcement authority on that land is the state. With regard to civil authority, that means that if, for example, there were an accident, the state would be available for any litigation over that whether the people involved were Indian or non-Indian. Any actions against the Tribe would still be subject to the Tribe's assertion of immunity, which the state courts do recognize.

Commissioner Heavey said he'd like a clarification of the issue of exercising governmental powers and when they had to start exercising governmental authority; **Mr. McCoy** said there are two legal issues that apply; the first is the IGRA itself, which treats trust land acquired after 1988 differently in that it requires approval by the Governor for gaming purposes. The second and more tricky question is the historical relationship between the Tribe and the land. The courts have looked at the issue in terms of whether the Tribe owns the land or controls the land or whether it's owned by members. The only case, under IGRA, that specifically deals with governmental power over non-reservation land that he found was the case Miami Tribe of Oklahoma v. U.S.. In that situation, they did look at the historical relationship between the Tribe and the members who owned the land, which was the controlling issue along with other unique facts that made the case compelling.

Commissioner Heavey said that whether this is Indian land is a mixed issue of law and fact. The facts alone do not determine the status. **Chairman Tull** said he heard Commissioner Heavey ask another question that hasn't been answered and that is what does the Act say about the requirement of timing of exertion. He read from IGRA where it says, "...and over which an Indian tribe exercises governmental power," which is not in past tense. **Mr. McCoy** said the statute itself does not make that distinction; **Chairman Tull** responded that it does make that distinction by stating it in the present tense.

Commissioner McLaughlin asked about the fact that Grays Harbor County recognizes this as Indian trust land and the fact that the County assessor has not asserted taxing authority in leading credence to the fact that it is Indian land. **Mr. McCoy** said a distinction has to be made. There's a definition in federal law of "Indian Country" and the Sampson Johns Allotment, as trust land, is Indian Country. Because it is owned by the federal government, it is not subject to local tax. The tax issue over the land is not a function of tribal authority, it's a subject of federal preemption, which means federal law preempts state taxation because it's actually owned by the federal government. That does not address the issue of tribal jurisdiction over the land, only federal jurisdiction over the land. **Commissioner McLaughlin** asked if he means the BIA has the jurisdiction over the land and not the Tribe; **Mr. McCoy** said the answer is both yes and no. It's confusing because there is a different term in the IGRA; the term "Indian land" has that additional requirement that a tribe exercise governmental power. Land can be taken into trust for a number of different reasons and may or may not be within the control of a particular tribe. If, for example, members of two different tribes might be married and own land; the question would be which tribe has jurisdiction over that land.

Senator Prentice said, with regard to what Mr. McCoy said about what qualifies land to be eligible to build a casino on, he talked about residents who live there and about exercising jurisdiction and tribal authority. She asked if all of those criteria must apply. **Chairman Tull** said that is precisely the question; what does this Commission think are the appropriate standards to

apply. **Senator Prentice** said her second question is that if this Commission were to decide to not go forward and approve this, that would be the end of it, but if the Commission approved it, there would be another set of attorneys in the Governor's Office looking at it and then another raft of attorneys at the Secretary of the Interior's Office, so wouldn't it be better to approve this now in order to not short circuit this process? **Mr. McCoy** said that sounds more like a policy rather than a legal question.

Chairman Tull said this is a gambling regulatory agency and he intends to evaluate this issue and the testimony based on whether this will advance or retard this agency's ability to regulate gaming in Washington.

Paul Alexander, attorney for the Quinault Indian Nation, said he was involved in drafting the Act and he thinks what Congress had in mind was to try and cover all the existing situations at the time of the Act and to exclude land in Alaska from coverage, so that's what the phrase "governmental power" was all about. Not all of the standards in the Oklahoma case need apply in this case; in fact, the Commission does not need to apply the Oklahoma case to this one. The issue of what are Indian lands is a federal question. He said the Tribe was willing to discuss this and provide evidence as part of the good faith negotiations, but it is not within the things the states has the right to negotiate about. He said he is aware of other compacts in Kansas where off-reservation land was approved in a compact, endorsed by the state, and the only evidence in that case was that the Tribe used the land for economic development and leased it. No one resided on the land and there was no law enforcement. The government wanted to know that the Tribe had a connection. With regard to what Mr. McCoy said regarding the Miami Tribe case, that was land south of Kansas City that the Tribe had sold for full value over 100 years and allotted to non-tribal members. The Tribe left Kansas to reside in Oklahoma and, well over 100 years later tried to establish a connection to the land when they had none. The Solicitors office that reviewed this looked through every possible connection and found none. The analysis was two pronged in that it looked at whether they had any connection to the allottees or any connection to the land. In the Quinault's case, they have connection to the land in many ways. California is a purely Public Law 280 state. When IGRA was passed to codify Cabazon the United States and the tribes received sole and exclusive jurisdiction in Indian Country over gaming. The only way the state of Washington will gain any jurisdiction over gaming is through a compact.

Commissioner Heavey asked if he's saying the Commission does not have the right to make its own independent determination as to whether this is Indian land; **Mr. Alexander** said they have the right to make whatever decision they want, but ultimately it is a federal question. If it ever got to the issue of whether it was good faith or bad faith, then the question would be whether this was even within the Commission's jurisdiction to consider. He said the Quinault Tribe, as a matter of negotiation, has been willing to provide all and complete evidence even though they believe it is exclusively a federal issue. **Commissioner Heavey** said the point is that the Commission has not been involved, on a detailed basis, in the analysis of whether this is Indian land. Unfortunately, the Commission is now faced with a compact that was negotiated and presented to it without some basic questions answered. He said the Commission has not made that decision. He said he doesn't know because he doesn't have an official opinion as to whether this is Indian land. There are opinions by lawyers, but his view is he wants an official opinion from his lawyer as to whether this is or is not Indian land. He said he doesn't have a problem with the issue of Indian gaming or where it's located, but he has questions as to the impact of this particular compact on future negotiations. He said he thinks these issues need to be raised so the public and other tribes can have guidance as to what they can reasonably expect in the future. **Mr. Alexander** said the Tribe has been up front about this issue from the very beginning with WSGC staff and they have never hidden from this issue. He said jurisdiction is often a concurrent issue. Because the state or the federal government over an area, a tribe may also have jurisdiction. He urged the Commission to consider the facts. He said many governmental bodies have had jurisdiction on the land in question; however, all the Commission needs to find is

tht the Tribe has some jursidiction.

Commissioner Heavey said he is not an expert in Indian law, but in 1963 he represented an Indian living in Oakview on a fishing case, so he knows something about Indian issues. He said he doesn't want to operate in the dark without an official position as to the appropriateness of his actions with regard to this particular issue and he doesn't care what the Governor does, he cares about his own actions.

Chairman Tull said the question to be dealt with is, in a situation that is either a mixed law-fact question or a purely factual question, whether Mr. McCoy can give anymore guidance than he already has; **Commissioner Heavey** said Mr. McCoy has written a very long memo and he would like an official opinion before him.

Chairman Tull said he has a sign-up list in front of him and he will call the names as they appear on the list. He asked that people try to be succinct and to avoid completely cumulative testimony.

PUBLIC TESTIMONY

Irene Thornton, Director, Ocean Shores Chamber of Commerce, said that in January 1996, they surveyed their members and 80 percent of them supported the Quinault issue. They still feel very strongly that this casino will help their tourism industry.

Micki Andersn said she really has a question for Mr. Lorton. She asked, if the casino is built and the police jurisdiction is combined, what about water and sewage? **Chairman Tull** asked the members of the Commission if they'd like to answer questions as they come or all at once after the public testimony; the commissioners indicated they'd like the questions answered following public testimony.

Tony Trambitas, Shores Mall/Whalers Plaza owner, said he speaks for most of the tenants in the area. He said he grew up in Ocean Shores and has seen good times and bad. He's seen Ocean Shores grow, but he's also seen the North Beach deteriorate. He said Grays Harbor has become very depressed because it's been a one-industry town. Tourism ranks as one of the hottest industries in the countries and he said he feels that with a casino, the tourists would come and stay longer, which would benefit the businesses at Ocean Shores. He said he has a letter from Gary Brandt, owner of A La Mur Texaco, and he supports this issue as well. He passed the letter to Carrie Tellefson so the commissioners can have a look at it.

Arne Krist, resident, said he has lived at Ocean Shores for the last eight years and has been involved in the environmental impact issues on the Peninsula. He said they want answers to the environmental questions and they have never had their questions answered. He said the City just went through two years of trying to get a permit to build a wetland, which is something everybody wants, and now the Quinaults are talking about destroying acres and acres of wetlands. He recommended a further investigation.

Bill Frazier, resident, said he sees in the compact that the Tribe is required to follow EPA and NEPA regulations, so that issue should be put to rest. He said he supports the casino project, which would be beneficial to the economy and would provide entertainment for him once or twice a month. He urged the Commission to approve the compact.

John Martin, resident, said he is neutral on the casino issue, but he asked about the fact that the community is located on a peninsula and there is just one road in and one road out. He said that there have Tsunami warnings at least once since he's lived at Ocean Shores and he is concerned about how people would be able to leave.

Ralph Downs, Illehe resident, spoke out against the casino. He said his basic feeling is that casinos degrade a community, not enhance it. He said this is a lose-lose situation. The North Beach is not dependent on a casino for tourism and he feels the casino will degrade the community further. He said there is a question about management and he understands that most tribes are operating in flagrant violation of a compact, without a compact or in flagrant violation of law, which doesn't bode well for the continuation of regulation. He said he heard the tribal attorney say they are only negotiating because they chose to and that the state has no..

(this portion of the tape until **, approximately 20 minutes, was inaudible due to technical problems)

Jessie Elles, property owner, spoke in favor of the proposed compact.

Pat Kurtz, Windemere Realty and Ocean Shores resident, spoke in favor of the proposed compact.

Don Durham, Mayor, Ocean Shores, spoke in favor of the proposed compact.

Bill Bennetts, Sea Breeze Inn owner and Ocean Shores resident, spoke in favor of the proposed compact.

Donald Holman, Ocean Shores Laundry owner, spoke in favor of the proposed compact.

Ron Thomasson, Ocean Shores Development Association president, spoke in favor and said the Association's members all support the casino project.

BREAK

Dennis Noyes, Ocean Shores resident, spoke in favor of the proposed compact.

Robert Jackson, property owner, said road construction and repairs are necessary in the area. ** He said he read in the Reader's Digest that in less than ten years, legalized gambling in Minnesota had created a new class of addicts, victims and criminals whose activities are devastating families. He said it is estimated that the cost to Minnesotans is \$200 million per year in taxes, lost income, bad debts and crime. Ten years ago in Minnesota, there was one Gamblers Anonymous group and today there are 53. There has been a dramatic increase in the number of pawn shops near casinos, and police say there is an increase in the number of bogus reports of thefts, which come from people who file a claim for lost valuables that they have pawned to pay for gambling. In one six-year period, counties with casinos saw the crime rate rise twice as fast as in counties without casinos, which increases the burden on local police departments. He said these are some of the reasons he doesn't want a casino here and he suspects that none of the Gambling Commission members would want one in their backyard either. He asked what the response would be from the Quinault Indians if Ocean Shores residents wanted to build a casino four miles from their city center.

Juanita Preuitt, resident of Ocean Shores, said she is against the proposed casino. She asked why the Quinaults are going to be allowed to build here when their own reservation is 12 miles away. If they were to build on their own land, there would be no opposition. She said Hogan's Corner is a wetland. She asked why the Commission would open all Indian gambling up to off-reservation gambling by approving it here, because if the Commission approves one, they will have to give them to all. She said the Joint House and Senate Commerce committees urged rejection of this compact and said the Commission should listen.

Ben Charley, Jr., resident, said his father, Ben Charley, Sr., grew up on the Chehalis River and used to go to school by canoe. He said the United States Marine Corps League, of which he is member in Aberdeen, said they want this to go forward and they'll come out here and do some gambling. He said he would like to see this casino go up because there are a lot of people

without jobs who don't want to be unemployed.

Tim Croto, Shilo Inn Manager, said Shilo Inn supports reasonable economic growth that creates more jobs and increased business activity without damaging the region's beauty. He said the company has had a very positive experience with the Chinook Winds Gaming Center next to the Shilo Inn at Lincoln City, Oregon. The Center has been a positive economic influence on the community and has created needed employment for both Indians and non-Indians. Shilo Inns also recognizes that many people have strong objections to gambling, whether by Indian tribes or otherwise, and they respect those views.

Dave Bingaman, resident of Ocean Shores for 19 years, said he has watched this community grow. He has coached Little League, soccer, and wrestling at the high school. He said this project is a positive influence for the community. He said the roadways can be controlled and they won't be impacted by the casino. He said, regarding complaints about the wetlands, he is the forest manager for the Quinault Indian Nation and they are fully capable of dealing with SEPA and NEPA, which deal with wetlands. He said the site is a large wetland, but the aerial photos show a series of wetlands and the casino is going to be built closer to the ocean where there are less problems with the wetlands. He said not a whole lot of people came out and griped when Ocean Shores filled in the waterways around here. He said it's still going on and the Army Corps of Engineers wasn't even aware of a permit need down here. The casino, because it's Indian-owned won't be contributing taxes but taxes will be generated through the tourist industry by the hotels that will be filled. When he was a volunteer for the Ocean Shores Fire Department, for five or six years he ran the casinos at Ocean Shores Inn, which used to stand where the Shilo Inn is now. He said it's nice to see the nonprofit organizations able to come in and make some money, but the Quinault Indian Nation shouldn't be excluded from that opportunity. He said he supports the casino, not because he works for the Tribe but because he is a citizen of Ocean Shores.

Anneke Van Doorninck asked how many casinos can there be, and how well is the casino in Sequim is doing and what it's doing for the community there. She said she'd like more data.

Lela Walker-Elgin, Best Western Lighthouse Suites Inn General Manager, said she is also the vice president of the Hotel Motel Association in Ocean Shores, which is comprised of 22 hotels and motels in the community. The Association is very much in favor of the casino at Hogans Corner because it will provide entertainment for their guests during not only the summer and weekends but also during the shoulder season and Sunday through Thursday. She said the community in general – Aberdeen, Hoquiam, and the surrounding communities – are economically deprived and need the boost as far as jobs are concerned. The hotels and motels pay taxes that help fix the roads and sewers.

Ken Elgin, Canterbury Inn, said he has lived in Ocean Shores since 1978. He said he is in favor of the casino and he has talked to many of his guests on the subject who are in favor of having the casino here too. Guests come to the front desk after 9:00 p.m. and ask what there is to do, and there really isn't a lot to do other than watch TV. The motel industry feels that the casino will be a definite plus in giving the guests something more to do when they come to Ocean Shores.

Jennifer Scott, Quinault tribal member, said she is in favor of the compact. She said it is important to demonstrate to the Indian nations and their citizens that when they willingly, openly and honestly come forward to enter into agreements with the state and other governments, that these processes are respected and the agreements achieved are honored. In this country, the history between the U.S. government and the tribal nations is shameful. Over and over, Indian people have witnessed the government policy and laws go against them and often work for the benefit of others. An example of this is the allotment act that broke up tribal lands and assigned individual tribal members parcels of land so that they would be farmers, which was a respectable profession in the eyes of the government. The other intent of this policy was to diminish the Indian lands to the greatest extent possible, which proved to be quite successful. On the

Quinault reservation, many non-Indian people became very wealthy when the Quinault Indian reservation's timber was harvested. There were a handful of individual Indian families that realized short term wealth, but for the most part, logging companies were the primary benefactors of this activity. Much of the land base was also lost during this time to outside interests. The Quinault tribal government has made repatriation of tribal lands a top priority so that someday the Tribe may once again be self sufficient. A successful gaming enterprise would further that goal for the Quinault Nation and its members. There are endless examples of wrong-doing to the Indian nations of this country; there is now an opportunity to start a new era of cooperation. The compacts have worked well so far, and approving this compact under IGRA will allow the Quinault Nation to benefit from the U.S. Supreme Court decision that originally affirmed the right of Indian nations to conduct gaming on their lands.

Roger Brooks, Ocean Shores Development Association Director of Economic Development, said he'd like to address some issues. He said there have been a number of concerns about traffic, and about 91 percent of the visitors to Ocean Shores come from between Everett and Olympia on the I-5 corridor. There are about three million visitors each year. If those people are going to come gambling for an evening, it is doubtful someone from Seattle is going to drive five hours round trip to come to the casino and go right back home. He said this casino will play to the three million visitors that already come to Ocean Shores and there won't be additional traffic. The casino will be entertainment for tourists and tourism is the number one industry. The town has 3,000 but does \$62 million a year in retail sales. Nearly \$40 million comes from tourism and from the local business community. If the casino were approved to be located on the reservation only, there are very dangerous narrow roads that are not lit and there are steep cliffs. The Hogans Corner site is safer.

Mr. Brooks said there has been testimony to the state from the Restaurant Association opposing approval of additional Indian compacts. He said a visitor from Seattle will probably eat one meal at the casino and then spend the night at a hotel and eat other meals elsewhere. The tourists come for the beach and the casino will be an additional entertainment option. There are nearly 1,000 hotel rooms in Ocean Shores, which is an increase of about 35 percent in the last 24 months alone. Those rooms and future rooms need to be filled. The activities now available are outdoor activities for nice weather. The town needs indoor activities also. He said, with regard to setting a precedent, there are 26 tribes in the state and 19 have already negotiated compact and several of the remaining have no interest in negotiating compacts, so this will not create a proliferation of off-reservation gaming in Washington state. This casino is estimated to create 300 jobs, of which 200 will probably be non-Indian jobs. The jobs will pay an average of \$30,000, which makes them family wage jobs that are much-needed in the community. Due to regulation, the timber and fish industries have been lost in Grays Harbor County. Tourism is the only remaining industry. Ocean Shores has been the site proposed for gaming to the Legislature for years. He said his organization recruited the Quinault Indian Nation into building its casino near the Ocean Shores community and has been working with the Tribe for three and a half years. He said the Association voted last December unanimously to support this; 80 percent of the Chamber of Commerce members voted in support, and the Hotel Motel Association unanimously supports the project, so it has wide community support. This will be a tremendous step forward in increasing the tax base. He urged the Commission to approve the compact.

Arnold Capoean, Quinault tribal member, said he is support of this casino because jobs in Taholah are becoming far and few between. He worked off-reservation most of his life until the Tribe got its own shake mill, which was in operation until the late '70s. He said he's now running survey lines and is looking for a new job. He said he hopes the casino gives him the opportunity to pursue a different job. He said it's difficult in his late 40s to operate a chain saw.

Herbert Mark Whitish, Chairman, Shoalwater Bay Tribe, said he came here today planning to not say too much, but he has to respond to things Mr. Alexander said and to some of the other comments. He said the Shoalwater Bay Tribe has a competing interest at Hogans Corner in that

they own one parcel of property and have two under option to buy. The Tribe fully intends to develop a casino or something on that piece of property. He said one thing Mr. Alexander said that really bothered him is that he was there and knows what the original intent of the Indian Gaming Regulatory Act was, which he said was to hold everything status quo so that those tribes with land off the reservation could take advantage of it. **Mr. Whitish** said that is not the case and that the case is that the stipulation was put in IGRA in Section 27-19 so that small tribes have the ability to go through the correct processes, which means through the county commissioners, the city people, the State Gambling Commission, the Governor and then the Secretary of the Interior. He said his tribe intends to take advantage of this process. He is in favor of Indian self-determination, which he said is the ability for tribes to make a meaningful difference in their ways of life. He said he is a health director on the Shoalwater Bay reservation and they are currently having the deal with thousands of dollars worth of cuts, and there are more and more people to take care of every year. He said he doesn't like the idea that the State Gambling Commission, or Mr. Miller in particular, is crafting this compact so that nobody else can take advantage of off-reservation casinos. He said that was not the intent of IGRA and they have just as much right to negotiate as anyone does. He said the Shoalwater Bay tribe has worked toward this and he spoke to Mr. Brooks four years ago in trying to develop this idea. He said he hopes that when the Shoalwater Bay casino comes to Hogan's Corner it will receive the same support as the Quinault proposed casino. He said the Shoalwater Bay Tribe is not going to stop; they're going to continue on with what they believe is their inherent right to do so. He said he hopes the city commissioners also give the Tribe the ability to say what they need to say about their dream and vision of Ocean Shores. Just because they couldn't come to an agreement due to artificial restraints by the State Gambling Commission, it doesn't mean they don't have the right to sit down and talk about it. He said he respects Director Miller very much and they are good sparring partners, but sometimes he wonders if what he's doing is fair. He said he thinks there is a process involved with the federal government that includes the people of the county and includes everybody in what is to be said. He said he doesn't see this one following that procedure.

Mr. Whitish said the Tribe's vision of the development of Hogan's Corner is not encroachment upon wetlands but to live in harmony with the wetlands and develop something around the wetlands to take advantage of the natural beauty of this area. He said they have a dream that will bring prosperity to all those involved, including the people of Ocean Shores. In referring to the comment that the Quinault facility will create 300 new jobs and only 100 of those will be filled by Quinault tribal members, he said there are only 150 members of the Shoalwater Bay Tribe and only half of them can work, so they will be offering even more jobs. He said it is incumbent upon everyone here to give his tribe an opportunity to talk too. He said he's been coming out to Ocean Shores for many years and he can only freeze on the beach for so long before he wants something else to do. Of the number of people traveling through the area, only a few spend the night. He said he doesn't think Indian gaming is associated with all social ills. With regard to the man who read from the Readers Digest, those were instances of one or two people out of millions who visited those casinos. Those states like Minnesota, Michigan and other states have had positive effects from tribal gaming. The tribes are being offering to work together so they can bring in jobs and revenue and although the Tribe doesn't pay taxes, each and every employee does and the vendors do. There are more benefits than adverse effects. He said he supports the concept of Indian gaming but not the Quinault compact. He said Indian gaming will provide better roads and a tax structure that will help out the area. He said everyone has to move forward to something else because there are no trees or fish left. The tourist industry is what's left. He said the Shoalwater Bay Tribe, given the opportunity, will build a casino to be proud of and that will draw people from many states around.

Chairman Tull said that IGRA does clearly provide a process for which "new lands" can be brought into the arena for use by a tribe. He asked what he foresees as the outline of the process the Tribe will go through to put those issues into the IGRA process. **Mr. Whitish** said the process, as he sees it, is that the Tribe would have to go to the people of Ocean Shores, to the Grays Harbor County commissioners, then to the Gambling Commission, then to the Governor

and finally to the Secretary of the Interior. **Chairman Tull** said it's not clear to him whether that process must accompany or follow a compact. It could be done independently. He said they could either commence the process and then negotiate a compact or do them together. He asked what the Commission should anticipate as a timeline for putting those issues into debate. **Mr. Whitish** said they have already started looking at the property and have hired environmental specialists to define what is wetlands and what is not. He said they want to come in with a viable option for people to look at instead of some amorphous idea. The people of Ocean Shores will be the most affected by the casino. He said the Tribe still intends to resume negotiations but they want to do homework first so that everyone is very clear about what the Tribe is proposing. He said he has talked with some of the Ocean Shores groups extensively, so the process has begun. He said there is already a new road going to their new property and they have the money to make things happen. He said he would write a letter to Director Miller and will go back to negotiating. There are many steps they will have to go through to make this happen. He said the Tribe has not been on the greatest of terms with the State of Washington and his involvement on I-651 threw that out the door. He said it's unfortunate the measure lost and the tribes are still being deprived of their ability to do what is inherently their right to do by federal statute. He said comments were made that what the Spokane Tribe and the Colville Tribe are doing is illegal, but that isn't the case. He said it is not against federal law.

Director Miller asked if the process has been initiated to convert that land into trust status; **Mr. Whitish** said the Bureau of Indian Affairs (BIA) had just come down with some new regulations to moving lands into trust – both gaming and non-gaming – and they were advised by the BIA that it would not do the Tribe any good at this time to start moving toward converting the land until the regulations came out, which happened about 10 days ago. He said some of the land issues they already worked through were kicked out, so they have to go through the process again. There is a lot of scrutiny and the Tribe is trying to operate within the laws set down by the federal government. He said IGRA was passed because of the Congress's will to want to help the tribes in economic development. The Shoalwater Bay Tribe is looking at a 40 percent shortfall in health programs, as is the Quinault Tribe. The reservation consists of one square mile, half of which is swamp and the other half is tidelands, so he has no where to build a casino other than moving to Ocean Shores. He noted that Mr. Brooks said they went after Quinault to build at Ocean Shores, but the Shoalwater Bay Tribe went to him long before the process began with Quinault. He said his tribe wanted to make sure it would be something the citizens wanted before going forward.

Chairman Tull said anyone who has not already testified who would like to, please come forward and get in line.

Dennis Dooley, resident, said he has lived in Ocean Shores for the last four-and-a-half years. He said his comments come from him as an individual but also as a staff member of the Southwest Washington Regional Transportation Planning Organization (RTPO), which is a five-county group. The two counties affected that he works with are Pacific and Grays Harbor counties. He said he believes that most of the people raising the road issues about how little there is or how great it is have spent little or no time trying to ascertain the facts. He said the RTPO has been developing road improvement programs along the coastal route. An issue for 12 years has been the coastal 101 corridor study to attract tourism for Western Washington, Oregon and California and develop a broader based economy. The initial stage was to include Route 109, but the federal rules eliminated that, although they are now considering a corridor study for 109. The state has received the funds and the study should commence within the next year and a half. The RTPO has attempted to get passing lanes and other improvements made to 101; however, there is no safety program in this state for road programs; it is done by abatement, which means there have to be so many bodies in the ditch before it's warranted serious enough to have attention. He said that in order to make improvements to 101, they need certain thresholds of traffic to warrant improvements by the state and federal governments. There is already a considerable amount of traffic into this community and the casino will probably offer some additional traffic, but improvements at Hogan's Corner are not going to be found to be

warranted to be made by the state until they get to a certain threshold level. Right now, the only state warrant for passing lanes is on mountain passes. There are a lot of technical details that go into the equation. If the casino attracts more visitors, it may be a way to the solution to an existing problem.

Timothy Merrill, business owner and resident, said he is the manager of OWW, which manages several business. He said he has lived here for about 16 years. He is definitely in favor of the casino and thinks it will bring more people to the town and fill up more motels. Casino gambling is a nighttime activity and the town needs more things for people to do at night or when it's raining. If the hotels fill up, it increases his business and is more profitable for everybody.

Ken Craego, investment group representative, said his group has been staying in tune with what's been going on. He said he just relocated his family, including kids ages three and five, here and this is the kind of community he wants to raise his children in. The economic base brought by the casino will do nothing but enhance it. He said he is in favor of the casino and asked what the time frame for approving this compact. **Chairman Tull** said that, when the public testimony is concluded, the Commission will determine whether or not it wishes to discuss this matter in open session, in executive session, to continue the matter to a future, or to use some other variation. The Commission may or may not decide today. He said the executive session is on an entirely different matter not related to Indian gaming. He said this is the 20th compact hearing held by the Commission and each one has been taken very seriously.

Pat Payton, resident, said he and his wife live at Ocean Shores and have a concern about the location of the casino because there is only one route in and out of Ocean Shores. If there is a tsunami and there is a considerable amount of congestion at the corner, they might not all get out. School buses have to use the corner and emergency vehicles have to use the corner. The citizens all exit through that corner for medical and dental purposes, to go shopping and to visit friends inland. He said they are very concerned about the safety of the corner. He said he heard Mr. Miller express concern about the patrons coming in and he hopes the Commission will consider the residents who live there too.

Imogene Kvist, resident, said she brought a letter that was sent to a member of the community. She said that the residents have many concerns about this project but she knows they will get gambling eventually. She said she listened to Mr. Whitish say his tribe would continue pursuing their casino, which is okay. She said he also didn't believe the Reader's Digest, and she has many other articles available about morality from the Kiplinger Report, the U.S. News and World Report, and Time Magazine. She read from the Kiplinger Report that said many areas are now saturated with casinos and other gambling and are drawing mostly local residents. An article in Time Magazine said that, despite the \$1.4 billion in annual tax revenues paid to states and localities nationwide, casino gambling is bad economics. It also said the poor wage a bigger proportion of their income and gambling tempts addicts who are expensive to treat. She said she had a discussion with Mr. Whitish in the back of the room and he gave her hope when he asked her what she wants. She said she would like to talk with him afterwards because she thinks they can all work together. One of the needs is for better roads and routes to and from town. She read from a letter sent by someone in California who said they have a casino 26 miles from Fresno on an Indian reservations near a lake and river used for fishing, camping and family outings. The road from Fresno is similar to the one here and people are always in a hurry. In the past 20 months there have been six fatalities and multiple injuries. The local police said passing and speeding are the biggest problems due to being in a rush to get to the casino or being upset when they leave. The letter said this highway has been a major dilemma for the community. She said if the tribes take the residents' needs into consideration, then they can work together.

Jim Donahoe, resident, said the two words that come to mind are focus and perspective. The focus should be whether gaming should happen at Hogan's Corner as opposed to on the reservation. He said his perspective is as a father and husband, as a local, as a property owner

and a business owner. His family has lived at Ocean Shores since 1962 when they moved from Seattle for a quality of life. He said the town has remained a resort community. Ocean City and Copalis need an economic boost and a casino at Ocean Shores will help them too. There are over 3 million visitors per year to Ocean Shores and each stays an average of nine hours. Providing additional activities for people to do inside will extend their visit. As a father and husband, he chooses to live here and wants his children to have a reason to continue living here. He feels strongly that if the Ocean Shores and North Beach communities are developed in a good way by having retirement and tourism work together, maybe the kids will decide it's a good place to live and they will stay. The casino will create good, paying jobs and will be just one of a number of things needed to make the community vibrant and viable. As a property owner, he'd like to see expanded tax base. The street he lives on needs replacing as do lots of others. As a business owner, he said the region this is going to benefit must be looked at. If the casino is not located at Hogan's Corner and goes to the reservation, it's not going to benefit the entire region. The success of the Tribe's gaming can be assured by locating it at Hogan's Corner. He said the comment at the beginning of the hearing about how long it takes to get to SeaTac, especially with the detour, relates how it would be trying to take the long and dangerous detour to the reservation if the casino were located there. It makes more sense to locate the casino in a place where people already come.

June Laurie, resident, said it is very obvious that this is business against residents of Ocean Shores. She wishes the casino would be built on Indian land and not so close to the town. She said if the Commission chooses not to keep the law that casinos should be built on reservations, then they could be built any place like Aberdeen and Hoquiam or Olympia. She said the entire road from Olympia to Ocean Shores could be lined with casinos. She said the residents of Ocean Shores would like to keep it as a home-like community with family values and less crime. She said she resents the racist remark about this being whites against Indians because she does not think it is but that it's more business against residents.

Hazel Strom-Smith, Quinault tribal member and land owner, said she is a resident of Taholah and also owns a little bit of property on the Sampson Johns trust land. This trust land was there before Washington became a state, so that's been a lot of years before the non-Indians have come around this area. She said she's spent a lot of summers down here on "the property" as they refer to it. She said the other elderly lady who was sitting in the audience before is also a direct descendant of Sampson Johns. There are only two who are direct descendants, the rest all have inherited interests there. She said she is in favor, very much so, of the casino because that land has been sitting there for years and it's about time that it's been put to use. She said maybe this kind of puts a face on the Sampson Johns property for everyone.

George Donahoe, resident, said he's lived in the Ocean Shores area since 1962, as his brother stated earlier. He said he is the president of the Ocean Shores Owners Association, representing nearly 800 tax paying owners. He is also president of Quality Vacations, Inc., the developer of the Windjammer Resort. He congratulated the Tribe for creating the idea of having the casino in a good location rather than the off-beat locations of some of the other casino locations. He said the project is a win-win situation in that the Tribe has a casino, the tourists have entertainment and the workforce in this part of Grays Harbor benefits from many new jobs. He urged the Commission to cast a positive vote and said the Tribe has negotiated in good faith.

Charles Donahoe, said his brothers have already testified. He congratulated the Tribe for picking a good area and said he appreciates that the Commission would come to the area to hold meetings. He graduated from Moclips High School and knows the area very well from all the years he's spent hunting and fishing. He said he thinks this casino project is needed. Listening to the comments from everybody such as reading from the Reader's Digest article and about the morality of gambling, he found it ironic that they were speaking to the State Gambling Commission, which is in the business of the Lottery. **Chairman Tull** corrected him and stated that the Commission has nothing at all to do with the Lottery, although that is a common mistake.

Mr. Donahoe said that since the state has authorized Lotto, Quinto and other games, it's ironic that there is so much involved in deciding whether this tribe can have casino gambling. He said in the old movies they showed kids in New York running numbers and getting arrested; now what used to be called the "numbers" is called the daily game drawing. The City of Ocean Shores needs these improvements and the help this project will provide. He said when he was fire chief in Ocean Shores, the local people didn't understand that there couldn't be a fire department with its equipment and ambulances without the tourist dollars that supplement property taxes and keep them from being so high.

Chairman Tull said the reason the Gambling Commission disclaims involvement with the Lottery is that it is a different type of agency; it's a business arm of the state, while the Gambling Commission is exclusively a regulatory agency.

Dan Prinzing, resident, said he has a small business interest in Ocean Shores. Most of the comments he's heard have been very positive and he has read positive thoughts about having a gambling casino nearby. He said he has gambles and enjoys it, but he is concerned about the impact on taxes. He said the roads are going to have a difficult problem handling the amount of traffic required for casino attendance. Ocean Shores already has high tax rate and if people are brought into Ocean Shores to support the casino, it will affect and increase the taxes by adding people. He said there are many churches in the area that do not positively support this project, and he believes if the majority of the population were to vote, the result would be a negative approach.

Chairman Tull asked if anyone else wanted to testify; no one came forward, so he closed the testimony portion. He said there was a request earlier for a response from the Quinaults to a question. He thanked the audience for excellent behavior under trying conditions and said the issue is important to everyone and is extremely complex. He noted that there has been essentially no discussion of the compact itself in the public testimony. The Commission appreciates the expression of concerns, which may have more bearing than usually on how the matters are resolved. It is useful for everyone in the community to air out these types of questions about the future of the community. The Gambling Commission is a regulatory agency and will probably stay focused on those questions.

Ray Lorton, Quinault Tribe, said he took notes during the testimony and would like to respond to some of the comments. To those concerned with water and sewer issues and how the casino is going to impact existing systems, he responded that the Tribe has a couple of options to go through, either self-sufficiently by processing everything on-site in a self-contained casino with portables or by working with city officials to utilize water and sewer systems. There is a water and sewer upgrade system being put together now and the city asked if the Tribe wanted to be part of that process since they may be having a casino in the area. The Tribe indicated it does want to be part of that process.

Mr. Lorton said the Tribe is environmentally conscious of their ecology, natural resources and impacts on their lands. They have regulations on fisheries, hunting and other areas and the Tribe regulates itself to the point where even the members are dissatisfied. They also have certain federal regulations to follow. He said the Tribe will be making sure all environmental issues are settled and regulations followed.

Mr. Lorton said that, with regard to emergencies and public safety, the Tribe has talked with a lot of officials including the Department of Transportation. There are considerations already with regard to widening the highway to increase access to Ocean Shores. In order to make this happen, the Department of Transportation had to work with the Tribe because some of the improvements are taking place on tribal lands. The Tribe does take these concerns seriously and is working with the state through the BIA to address some of the concerns. He said there was a comment made about the casino having some relevancy to degrading tribal culture. At the other

casinos throughout the state, some are culturally relevant to their way of life in their areas and are demonstrating aspects of tribal culture. The Quinault Tribe will also demonstrate its culture and way of life in anyway they can with the design of the casino to make it culturally relevant.

Mr. Lorton said that charitable organizations in the area such as the Hoquiam Eagles who said they will be impacted in the bingo arena such as they have been with the Lucky Eagle casino operation. He said it's very important that people understand that gaming is entertainment and there will not be a great emphasis on bingo. The facility will accommodate bingo but also place a larger emphasis on big name entertainment. The two charitable tables will help make sure the needs of some of these charities are accommodated as well.

Mr. Lorton said, with regard to the question with regard to casinos throughout the state and the number the market will bear, the Quinault Indian Nation has to base its situation on the area and its market situation. A casino in this area will be strategically located. A casino on the reservation may not be successful, so they have proceeded through the steps provided under the IGRA. He concluded by saying that the economic opportunities, the jobs that will be created, and the cooperative relationship with the Gambling Commission and its staff are all things that build credibility. They want to do this in the best way possible to arrive at a win-win situation for the community and the Tribe. He said the Commission is going to have to take into consideration how their decision will apply to other situations in the future. He acknowledged the Commission for doing a lot of good work in preparation for this decision and the staff for being supportive of the Tribe's position on the compact in this location.

Commissioner McLaughlin asked how the Tribe plans to handle the problem gambler; **Mr. Lorton** said he would go back into the community and look at the potential impacts on the community and the people who come out to gamble, and then he would look at ways to put revenues back into programs to help problem gamblers. He said he doesn't think they can prevent the problem, but it's very important to have educational program in schools and in the communities.

Chairman Tull said that the Commission is reaching its time limit on the room and must wrap things up and limit questions from the audience. He asked the Commission members if they have anymore questions for Mr. Lorton; no one did. He said a determination must be made by the Commission as to whether or not this proposed site falls within federal law in order to approve the compact. This question has not been addressed before by this Commission; however, it is just one of many issues involved.

Commissioner Ludwig suggested taking a short break. **Chairman Tull** called for a ten-minute break.

Chairman Tull said the executive session would be held in a separate room upstairs so the Commission can meet with Assistant Attorney General Bert Paul on unrelated litigation.

Chairman Tull said the Commission has not received any new information today regarding the specific contents of the compact. Many people have made very sincere comments about their concerns regarding gambling and the apparent discrepancies between allowances for gambling depending upon whether one is part of a tribe or not, which are issues the Commission has discusses many times in the past. The state has tried, since the passage of the IGRA in 1988, to make sure that gambling is carefully regulated and to be fair to all concerned. Over the years, the Commission has been criticized on all sides for being too lax in favor of the other side. The compact process is in conformance with state and federal law and with sound public policy. There is a unique situation in that this compact involves lands held in trust by the United States government outside the boundaries of an Indian reservation. He said it would be in each tribes best interest to have its casino located as centrally as possible. If the vote today were on where the casino would be located, he would probably get the map out of Ocean Shores and look for

more central sites, but that is not the situation. The Commission is looking at the proposed site and whether they are satisfied that the compact will carefully regulate gambling consistent with the public policies of the state and that the lands qualify as they interpret the IGRA. All the environment and siting issues still remain to be resolved by the Tribe and other agencies. He said wetland issues are a struggle for everyone.

Commissioner Heavey made an official request, as a member of the Gambling Commission, for Mr. McCoy to give the Commission an official Attorney General's Opinion on whether on this record this land meets the requirements to be classified as Indian land pursuant to IGRA.

Chairman Tull said he has never looked at the question as to whether or not a member of the commission can trigger the official formal Attorney General process; **Commissioner Heavey** said yes, they can. **Chairman Tull** said if that's triggered, then at some point in the future that opinion would be received.

Commissioner McLaughlin asked, assuming that request is honored, does it mean that the Commission can't take action today; **Chairman Tull** answered no. He said he's not even sure whether or not Mr. McCoy is able to tell the Commission if he would be the person to render such a formal opinion or not.

Mr. McCoy said there is a formal procedure that the Attorney General's Office goes through when requests for formal opinions are made. That's done through the Solicitor General's Office and he said he doesn't know who and under what circumstances an official request is accepted and what the formal process is. He said he will find out. **Commissioner Heavey** said he has some acquaintance with process and his understanding is that an official of a state agency can, in that official capacity, request an Attorney General's Opinion, just as a member of the Legislature can request an Attorney General's Opinion. **Mr. McCoy** said he believes that is correct.

Commissioner Heavey said he is asking for the opinion in order to guide him in his determination of what he is doing meets the requirements of the law. He said he doesn't have any problem with anything else, but he wants to be sure he is following the requirements of the law. If the determination comes that this is not Indian land, then that has the force of law until overcome by a decision of a court. As it relates to public officials operating under Washington law.

Chairman Tull said the advice the Commission is receiving from Mr. McCoy is that the question of whether it is Indian land is absolutely an issue with which the Commission must grapple. It is up to the Commission to determine whether or not, in the opinion of the Commission, this record and these facts indicate that this land is within the purview of that particular section of the IGRA, therefore qualifying it for a compact process. He asked Mr. McCoy to respond as quickly as possible if any further action is necessary to get the opinion that Commissioner Heavey is looking for. It does not necessarily prevent the Commission from going forward. Each member has to determine the level of information needed to apply the type of scrutiny that each member thinks is appropriate.

Commissioner Ludwig said that, for the reasons mentioned earlier, the Commission needs to do something. This compact is essentially the same as all the other compacts except for the location of the casino. He said he would like to make some headway today and go ahead with this even considering all of the comments made today, some of which are not within what the Commission can do. The Commission regulates and controls gambling and cannot control tribal Indian gaming casinos without compacts.

Commissioner Ludwig moved to adopt the compact, or vote on the compact, subject to having the opinion Commissioner Heavey has asked for.

Chairman Tull asked for clarification. He said if the Commission recommends the compact it goes to the Governor and he gives it such scrutiny as he thinks is appropriate. He asked if Commissioner Ludwig's motion means that if there is an opinion issued, then would the compact come back to the Commission? He said he would have problems with that because the Attorney General's Office is not empowered to forward a compact to the Governor. He would not like to accidentally pushed the decision over to the Attorney General.

Commissioner Ludwig said he would like to move this compact forward in the process along to the Governor's Office. The Attorney General may or may not change what the Gambling Commission has done; **Chairman Tull** clarified that the opinion would then just be available for the benefit of the Governor.

Commissioner McLaughlin seconded the motion.

Commissioner Heavey asked Commissioner Ludwig if it is his intention, with his motion, that if the opinion comes back that this is not Indian land under the definition in IGRA, that it still goes forward to the Governor, or does the Commission make an independent decision that, in spite of that opinion – assuming the worst case scenario – the Commission is still going to approve the compact. He asked if the Commission should take a second look at the compact, or do just let the Governor consider the opinion.

Chairman Tull asked Commissioner Ludwig if it is his intention that this motion would be undone by, presumably, some forceful decision from the Attorney General, or that the opinion be available to the Governor for his perusal. **Commissioner Ludwig** said the intent of his motion was to keep it moving. He supposed that if the Attorney General finds that this is not Indian land, then it would be appropriate for the Commission to reconsider, although he said he's not sure how, mechanically, that could be done. **Chairman Tull** said that, personally, he would have a problem in that Mr. McCoy has indicated that it is a question of the Commission's decision in how to apply the law as it interprets with regard to the facts as the Commission understands them. He is unwilling to act contingent upon the concurrence of some member of the Attorney General's Office, with who he'll have no contact. He said he would be supportive of a motion that it goes forward to the Governor and the Governor gets the benefit of the Commission's conclusion and that the Attorney General's opinion were available for the Governor. **Commissioner McLaughlin** said that was her interpretation of the motion she seconded.

Commissioner Ludwig said his intention is to keep this moving in the process since it may be even more difficult to have a quorum at another meeting. He said he feels that, given the documents in the file, that this meets the definitions under IGRA and there's also the provision in the compact that says it also requires that the Secretary of the Interior determines this to be Indian lands.

Commissioner Heavey said that if Commissioner Ludwig is satisfied, that's fine; however, Commissioner Heavey said he is not satisfied. He said he appreciates Commissioner Ludwig's consideration of his concern. He added that at least five people have come forward and said they have lived here for a long time, but not one person has talked about the activity at Hogan's Corner. The heir of Sampson Jones also testified but did not comment about what kind of activity went on at the site. If the Quinault Nation passed a constitutional provision that says they will assert jurisdiction on land both on and off the reservation and that satisfies the requirement, then he doesn't have any problem with that. What he has a problem with is that he is not satisfied that he has sufficient information for him to make a determination to proceed. If others are satisfied, he said they should state that they are satisfied and proceed; however, he is not satisfied. That is why he has requested an official A.G. opinion, which, as he understands it, has the force of law. If it has the force of law until reversed by a court, then the Commission would be proceeding at its own risk. He said he is just one vote of four. **Chairman Tull** said he believes the Commission's

decisions also have the force of law; **Commissioner Heavey** said that may very well be.

Chairman Tull asked if any other commissioners have comments or questions; **Commissioner McLaughlin** said she is satisfied that this property has had Quinault Nation government power and has for many, many years prior to the IGRA. Evidence includes the contract that the flea market stating that it has been under Quinault Nation control, the law enforcement letter, and the fact that the assessor didn't assess this property on the assessment roles. She said she feels the compact is needed, it was negotiated in good faith and it is a matter of fairness. She said she is satisfied that this site is Indian trust land.

Chairman Tull said he is also satisfied that the land falls within the particular purview of IGRA. He said there is an awful lot of discussion about precedent, and he wants the record to be very clear that he cannot conceive that the Commission's review of a particular circumstance in a specific community on a specific site can in any legal or practical sense be viewed as a precedent, whether binding or persuasive, in some future, totally different situation. One of the traditional legal notions about real property is that each piece is unique. Future Commission decisions should not be bound to any theory of precedent. The Governor is not bound to any future action on Indian gaming, and no other agency or arm of state or local government is bound by this decision. The Commission is determining, for purposes of whether or not this compact is forwarded to the Governor; whether or not the Commission thinks the Quinault Nation exercises governmental power over this property. Until Congress, a court with appropriate jurisdiction, or the Washington State Legislature tells the Commission what specific things a tribe has to demonstrate, then it's up to the Commission to decide. He said he is comfortable that the site qualifies. Future proposals will be examined from the ground up and determined individually.

Commissioner Heavey said he agrees that each compact is determined on its individual merits. He said what impresses him about this particular issue is that the community asked the Quinalts to come and locate the casino on the particular piece of property, that it has the overwhelming support of the community, and that the community has spoken very strongly in favor of it. He said those are justifications in and of themselves for locating it on this site. He said if he were to vote in favor of the motion, it would not be based on the staff's list of justifications and he would not adopt them as a precedent. As to the accessibility of the property and the fact that it is within 12 miles of the reservation, he said there may be other tribes that have asked to negotiate off-reservation property that have trust land within 12 miles of the reservation. As to accessibility for health and safety reasons and whether a piece of property is located on I-5 or eight miles from Rochester, the I-5 site would be more accessible and that would be justification for the Chehalis Tribe to locate on I-5, or for the Yakamas to locate their facility outside of Vancouver. He noted that number four says the trust property is more accessible to local law enforcement than the reservation and asked what it is more accessible than. Where it says the Secretary of Interior determines this to be Indian lands pursuant to IGRA, that's fine, but Indian lands are different than Indian country.

Commissioner Heavey said the list of criteria is precedent setting because then that's what others look to for similarities and justifications to come in and ask to be relocated; however they do not have what this tribe has in a request from the local economic people who have asked them to locate here. The Quinalts also have the overwhelming support of the community. He said these are the important issues, and the staff's list is not criteria but is excuses.

Chairman Tull said he concurs with a significant portion, particularly noting that it is clear that Congress anticipated that that tribes could propose new lands and have a process to go through and bring the proposal forward. The Governor has the veto and the Legislature could presumably address the exercise of that gubernatorial power, although such a situation has not occurred in this state. The issue of local support and cooperation is crucial. Those who have been involved in this process know that the casinos tend to fit in better than people thought they would, and they tend to have less impact on the community. He said he hopes that is also true at

Hogan's Corner, or in Puyallup, or wherever else the casinos are built. The Commission was not invested, either by the federal government through Congress or by the state through the Legislature, with the authority to take on all the issues. As a land use attorney, he would love to get involved with the land use questions, but the Commission doesn't have that power.

Chairman Tull said that Commissioner Heavey is accurate in pointed out that the recitations in the summary, including page seven, paragraph G, "Authorized Gaming Facility," do not purport to be a recitation of weighing of whether this site fits within governmental exercise or not. They are simply some descriptive limitations as to this particular proposal. They are not precedent setting and anyone in the future who suggests that they are can be referred to the transcript of this proceeding.

Commissioner Heavey said that what he is relying upon as "precedent setting" is that this is what the staff is telling the commissioners as to why this compact should be approved. He is not opposed to this being located at Hogan's Corner, but he also is concerned about someone coming along later and saying this should be applicable to them, too. That may not mean this is precedent setting, and he agrees that each compact is considered on its individual merits, but what persuades him is the other factors present, not those listed by the staff, which are applicable to any number of parcels of land owned by Indians. He said the Shoalwaters have an excellent point in that if this is available to one tribe to improve its gaming activities and its situation, then it ought to be available to all tribes. And whether they have, by historical accident, been confined in a way that they can't take advantage of it and can't maximize profits, then the Commission ought to take a look at that situation and try to maximize their profits. He said the Shoalwaters have a valid point, but whether or not he would vote for something they propose in the future is another question. There is a lot of help from gaming activities that tribes don't get from any other source because the government refuses to recognize the overwhelming needs on Indian lands.

Chairman Tull said there is a motion now before the Commission to forward this proposed Class 3 tribal-state compact involving the Quinault Indian Nation and the State of Washington to Governor Mike Lowry. It is with the understanding that it may be accompanied or preceded by a formal Attorney General opinion if one is rendered in time. Adoption of the motion would be, in his opinion, a determination by this Commission that, under the facts available, this particular compact is worthy of the Governor's favorable consideration. He asked if there were any further questions; no one had questions. *Vote carried with five aye votes; Commissioner Heavey voted nay, for the reasons stated.*

Chairman Tull restated the appreciation of the Commission to all those who have participated in a process that has stretched for many, many months. The Commission has kept abreast of the process as it has gone on, and today was the Commission's opportunity to act. The Commission has tried to make sure that the staff took considerable pains to test the opinions locally to find out what mattered locally and the Commission has heard a lot of good information. The time that it takes this to go forward to the Governor may or may not permit further clarification from the AG; the Governor's Office and the Attorney General's Office work together on many things and they will get the benefit of that guidance along the way. **Commissioner Heavey** suggested that the decision will be that it's not their prerogative to give an opinion.

Chairman Tull thanked the representatives of Ocean Shores, the Ocean Shores community, and especially the Quinault Indian Nation, which has worked in a very cooperative fashion. This casino opportunity for this overall area is difficult to predict. People are going to have to work together to have it be successful.

Chairman Tull called for a recess and said the Commission will reconvene in executive session on a completely separate matter involving pending litigation of an unrelated nature. The executive session will take place in the Chinook Room on the fourth floor. There will be no

further public session.

NOTE: THESE PRINTED MINUTES PLUS THE TAPES CONSTITUTE THE FULL MINUTES.

Susan D. Green
Executive Assistant